

The Office Action then states that the “species are independent or distinct because they required different search that is independent form [sic] the other.”

At the bottom of page 4, the Office Action states the “inventions are distinct, each from the other because of the following reasons:”. No reasoning is provided there, however. In fact, beyond the bare statements that the species are different, there is no rationale or support given regarding the difference.

Furthermore, the Office Action does not identify which claims correspond to each of the different species, and without a rationale provided it is difficult for Applicants to make a selection, even though one was required.

In the first place, although the species are divided amongst Figures 1-4, a flowchart of the method of the process is set forth in Fig. 6. Claims 1-8 are method claims and claims 9-24 are system or device claims.

Secondly, with out a rational for the division, Applicants are unable to separate out any of the pending claims according to the various species identified.

Applicants respectfully submit that restriction requirement of the second Office Action is not properly made.

Reconsideration of the restriction is also respectfully requested for the reasons advanced in the first Office Action response. In fact, by withdrawing a two-way restriction, and replacing it with a four-way restriction, the reasoning is even more pertinent. Restriction is not required by 35 U.S.C. §121, as suggested in the Office Action. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C. §121 “... the Commissioner *may* require the application to be restricted....” (emphasis added).

Furthermore, MPEP § 803 lists two criteria that must be present for restriction to be proper:

- 1) The inventions must be independent or distinct as claimed; and
- 2) There must be a serious burden on the examiner if restriction is required.

In searching the Species I claims, the class and subclass for the Species II, II, and IV claims will undoubtedly be searched, to ensure that no relevant art is overlooked. For this reason, there is no significant burden on the examiner, and certainly no serious burden as required by MPEP §121.

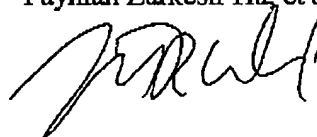
In fact, maintaining the requirement for restriction not only burdens applicants with the additional costs associated with filing and prosecuting separate patent applications, but also requires the examiner to duplicate efforts by examining multiple applications of closely related inventions. Such practice not only wastes public and private funds and Patent Office resources, but also leads to the possibility of inconsistent examinations of closely related inventions. Accordingly, applicants respectfully request that the examiner reconsider and withdraw the restriction requirement.

In light of the foregoing, applicants respectfully submit that a full and complete response to the Office Action is provided herein, and request that the application proceed to examination.

In the event this response is not timely filed, applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to deposit account 12-2252.

Respectfully Submitted,

Payman Zarkesh-Ha, et al.



By Timothy R. Croll  
Reg. No. 36,771

(408) 433-7625  
LSI LOGIC CORPORATION  
1621 Barber Lane  
M/S D-106  
Milpitas, CA 95035-7451

Date: September 1, 2006